



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/550,926	08/08/2006	G Eric Engstrom	120083-145059	4431

60172 7590 10/08/2009  
SCHWABE, WILLIAMSON & WYATT, P.C.  
1420 FIFTH, SUITE 3010  
SEATTLE, WA 98101

EXAMINER
----------

GARY, ERIKA A

ART UNIT	PAPER NUMBER
----------	--------------

2617

MAIL DATE	DELIVERY MODE
-----------	---------------

10/08/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.



## DETAILED ACTION

### *Double Patenting*

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 13 and 15 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 10/550,925. Although the conflicting claims are not identical, they are not patentably distinct from each other because they claim essentially the same subject matter.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 4, 5, 7, 9-11, 13, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kohinata, US Patent application Publication Number 2003/0129964 (hereinafter Kohinata) in view of De Jong, US Patent Number 6,883,716 (hereinafter De Jong).

Regarding claims 1, 7, 13 and 15, Kohinata discloses an apparatus comprising: a plurality of components including a component to store a reference photograph, wherein the reference photograph is a photograph of an article or an object; a camera; and operating logic to activate the camera on power-on or reset to take a photograph, compare the photograph to the stored reference photograph to authenticate a user, and to operate the components depending on whether the user is successfully authenticated based at least in part on said comparison of the photograph to the reference photograph, wherein the operating logic is configured to allow a first set of functions to be made available after successful authentication of the user and wherein the operating logic is further configured to allow a second set of functions to be made available after unsuccessful authentication of the user, the second set of functions including fewer functions than the first set of functions [paragraphs 0043-0046, 0049-0051, 0055, 0057-0058, 0063-0064, 0073-0074].

Kohinata discloses that the photograph is of a finger of the user and does not specifically teach taking a photograph of a non-anatomical object or a manufactured article. However, De Jong teaches using a photograph of a non-anatomical object or a manufactured article to provide a basis for authentication [abstract; fig. 1; col. 5: lines 21-25, 37-44; col. 6: lines 43-52].

At the time of the invention, it would have been obvious to one of ordinary skill in the art to modify Kohinata to include De Jong. The motivation for this modification would have been to compare the image of non-biodata as the particular object photographed is a matter of design choice.

Regarding claims 4 and 10, Kohinata does not specifically disclose the apparatus further comprises a reader to facilitate provision of the reference photograph from a source external to the apparatus, for use to authenticate the user. However, De Jong teaches this limitation [fig. 1; col. 5: lines 21-25, 37-44; col. 6: lines 43-52].

Regarding claims 5 and 11, De Jong discloses the reader is an electronic reader, an optical reader and a magnetic reader card [fig. 1; col. 5: lines 21-25, 37-44; col. 6: lines 43-52].

Regarding claim 9, Kohinata discloses saving the reference photograph [paragraph 0051].

### ***Response to Arguments***

5. Applicant's arguments with respect to claims 1, 7, 13, and 15 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Erika A. Gary whose telephone number is 571-272-7841. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dwayne Bost can be reached on 571-272-7023. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/EAG/  
October 7, 2009

/Erika A. Gary/  
Primary Examiner, Art Unit 2617